

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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12 BRUCE KNIESPECK,

13 NO. CIV. 2:01-0878 WBS EFB

14 Plaintiff,

15 v.

ORDER RE: MOTION FOR RELIEF
FROM JUDGMENT

16 UNUM LIFE INSURANCE COMPANY OF
AMERICA, et al.,

17 Defendants.

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20 On December 21, 2006, this court entered judgment in
21 favor of plaintiff pursuant to a two-phase bench trial and
22 awarded plaintiff partial disability benefits in the amount of
23 \$171,200.00 and "benefits going forward, conditioned on the
24 requirements of the Policy as interpreted by [the Court's]
25 order." (Docket Nos. 71, 72.) In a separate Order dated
February 12, 2007, based on the fact that plaintiff was the
prevailing party under its previous order, this court awarded
plaintiff attorneys fees and costs in the amount of \$55,502.50

1 and prejudgment interest in the amount of \$27,147.19. (Docket
2 No. 101.) On January 14, 2009, the United States Court of
3 Appeals for the Ninth Circuit vacated and reversed this Court's
4 December 21, 2006 judgment. (Docket No. 109.) Defendant now
5 brings this unopposed motion to vacate this court's February 12,
6 2007 Order pursuant to Federal Rule of Civil Procedure 60(b)(5)
7 as based on an earlier judgment that has been reversed or
8 vacated.

9 Rule 60(b)(5) provides that the court may relieve a
10 party from a final judgment or order if "it is based on an
11 earlier judgment that has been reversed or vacated." Fed. R.
12 Civ. P. 60(b)(5). The appellate court's reversal and vacatur of
13 this court's December 21, 2006 judgment clearly prevents it from
14 "spawning any legal consequences," by an award of attorneys fees
15 and costs to a party who has no longer prevailed. United States
16 v. Munsingwear, 340 U.S. 36, 40-41 (1950).

17 IT IS THEREFORE ORDERED that defendant's motion for
18 relief from judgment be, and the same hereby is, GRANTED. The
19 order of February 12, 2007, awarding plaintiff attorneys fees and
20 costs is hereby VACATED AND SET ASIDE.

21 DATED: October 13, 2009

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23 WILLIAM B. SHUBB
24 UNITED STATES DISTRICT JUDGE

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